IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.596 of 1990

Bhalchandra Shankar Patil .. Appellant

V/s

Pandurang Aba Raut

since deceased through LRs

1) Hareshwar Pandurang Raut

2) Smt.Tara Chandrakant Patil ..Respondents

Mr.Shahen Pradhan holding for Mr.Nitin Pradhan for Appellant

Mr.S.G.Karandikar for Respondents

CORAM:S.R.SATHE,J.

DATED:3rd August 2004

ORAL JUDGMENT :-

1. Being aggrieved by the judgment and order passed in Civil Appeal No.116 of 1988 by the Court of Additional District Judge,Thane whereby decree for possession passed against defendant in Regular Civil Suit No.19 of 1980 by the Court of C.J.J.D., Palghar was confirmed and the appeal was dismissed, the defendant has preferred this second appeal. For the sake of convenience hereinafter the parties shall be referred to as the

plaintiff-landlord and defendant-tenant.

2. The brief facts giving rise to this appeal are asunder :-

. One gala out of suit house situated in Survey No.750 at village Kelwa was in possession of the defendant as a tenant of plaintiff at monthly rent of Rs.10/-. When the plaintiff noticed that defendant had in fact closed the said gala and was not occupying the same for continuous period of more than 6 months and as the suit gala was also required by the plaintiff for his personal use and occupation, the plaintiff issued notice to the defendant and terminated his tenancy and finally filed a suit bearing Regular Civil Suit No.19 of 1980 in the court of C.J.J.D., Palghar and claimed possession of the suit house. The defendant filed his written statement and contended that provisions of Bombay Rents Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as Bombay Rent Act) are applicable to the suit premises and as a result of the same he is entitled to seek protection under Section 12 of the Bombay Rent Act. He also denied the other allegations of the plaintiff that the suit premises were closed by him and were not being used for more than 6 months. On these pleadings the learned trial Judge framed the issues at

Exh.17 and after considering the evidence adduced by both the parties the trial Court came to the conclusion that the suit property is situated at Kelwa and Notification in question was made applicable to the property situated at Kelwa Road and as such the provisions of Bombay Rent Act are not applicable to the suit room. He also held that plaintiff has properly terminated the tenancy and is entitled to recover possession from the defendant. He therefore decreed the suit in favour of the plaintiff.

3. Being aggrieved by the same the defendant tenant filed Appeal No.116 of 1988. After hearing both the learned Advocates the first Appellate Court also came to the conclusion that provisions of the Bombay Rent Act are not applicable to the suit house and decree for possession passed by the lower Court is legal and correct. Naturally, he dismissed the appeal. Being aggrieved the defendant tenant filed the present second appeal.

4. In this appeal before me Mr.Pradhan learned Advocate for the defendant tenant has urged only one point. He submitted that provisions of Bombay Rent Act were in fact applicable to the suit room and as such the suit should have been tried by the Special Court competent to try suit under the Bombay Rent Act and tenant was entitled to seek

protection of the provisions of Bombay Rent Act. He therefore submitted that the trial Court had in fact no jurisdiction to try the present suit which was obviously filed not under the Bombay Rent Act but under general law. He therefore, submitted that appeal be allowed and decree for possession passed by the trial Court be set aside. As against this Mr.Karandikar, learned Advocate for the plaintiff landlord submitted that provisions of Bombay Rent Act were applicable to village Kelwa Road and not to village Kelwa.There was nothing on record to indicate that the suit property was situated within the territorial jurisdiction of Kelwa road. He, therefore, submitted that orders passed by both the Courts below were legal and correct. Alternatively he submitted that if it is held that Bombay Rent Act is applicable to the suit premises then the matter be remanded to the concerned Court for deciding of the said suit by applying the provisions of Bombay Rent Act.

5. It is not in dispute that the suit room is situaed in Survey no.750 of village Kelwa. It is also admitted fact that village Kelwa and Kelwa Road are different. The learned Advocate for the defendant tenant has drawn my attention to Government Resolution No.BRA 1878/274-DII dated 15-12-1981. The said Notification reads as under:

> In exercise of the powers conferred by the second proviso to sub section 91) of section 6 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom.LVII of 1947), the Government of Maharashtra hereby directs that in the area of the Kelwa Road village in the Palghar Taluka of the Thane District, Part II of the said Act shall, with effect from the date of publication of this notification in the Official Gazette, reapply to premises let for the purpose of residence.

. From the above Notification it is very clear that so far as residential premises situated at village Kelwa road are concerned, the provisions of Bombay Rent Act are made applicable to the same area from 15-12-1981. The present suit has been filed on 28-3-1980 so the question arises whether provision of Bombay Rent Act can be made applicable to the present suit premises in this suit. In order to succeed in this endeavour the defendant tenant has to show that property is situated in Kelwa road and not village Kelwa. For that purpose the learned Advocate for defendant tenant has produced Government Resolution No.TNC 1076/63923/P-1, dated 27-5-1976. If we peruse the said Notification we find that by virtue of the

said Notification properties specifically mentioned in column no.5 situated in village named in column no.2 were brought in the village renamed in column no.4. Accordingly if we peruse the entry 1, sr.no.32 we found that certain survey numbers situated at village Kelwa have been brought in the village Kelwa road.So it appears that since May 27, 1976 the Survey NO.750 in which the suit room is situated was forming part and parcel of village Kelwa road and not village Kelwa. So, if we read the abovementioned notification dated 27-5-1976 as well as Notification dated 15-12-1981 then it is crystal clear that provisions of Bombay Rent Act are made applicable to the suit premises from 15-12-1981.

6. The question arises whether the said provisions were made applicable to the pending suits, here admittedlythe present suit was filed prior to 15-12-1981 for that purpose the learned Advocate for the defendant tenant has placed reliance on case of Shah Bhojraj Kuverji Oil Mills and Ginning Factory V/s Subhash Chandra Hograj Sinha reported in AIR 1961 SC 1596. In that case tenancy had come to an end by efflux of time on March 14, 1957. the landlord filed a suit for possession in April 1957 in the Court of Joint Civil Judge,J.D.,Erandol. Meanwhile under Section 6 of the Bombay Rents, Hotel and Lodging House

Rates control Act, 1947 a notification was issued applying Part II of the Act to the area where the property is situated. The tenant therefore claimed protection of Section 12 in part II of the Act which deprived the landlord of the right of possession under certain circumstances. The apex Court was required to consider the issue as to whether under such circumstances when admittedly the notification regarding application of Rent Act has been issued subsequent to the filing of the suit can be made applicable to the pending suit. After considering the provisions of Section 12 as well as Section 50 of the Act apex Court observed that "Then again, S.12(1) enacts that the landlord shall not be entitled to recover possession, not "no suit shall be instituted by the landlord to recover possession". The point of time when the sub section will operate is when the decree for recovery of possession would have to be passed. Thus, the language of the sub section applies equally to suits pending when Part II comes into force and those to be filed subsequently. The contention of the respondent that the operation of S.12(1) is limited to suits filed after the Act comes into force in a particular area cannot be accepted."

7. In view of this ruling the Notification issued under Section 6 during pendency of the suit is

applicable to the pending suit and the contention of the defendant tenant that operation of Section 12(1) is limited to suit after the act came into force is not acceptable. So I have no hesitation to hold that when the suit was decided i.e. 1-7-1988, the provisions of Bombay Rent were made applicable to suit premises and as such the learned lower court ought to have taken into consideration this aspect and should have decided the present suit or should have transferred the said suit to the concerned Court and try the same under the provisions of Bombay Rent Act. However, he decreed the suit holding that provisions of Rent Act are not applicable. The appellate Court also confirmed the said finding. For the reasons mentioned above, it is very clear that findings recorded by both the courts below are not sustainable and it is essential to set aside the same. The appeal is allowed. The decree passed by the courts below is set aside and the matter is remanded back to the Court of C.J.J.D., Palghar with directions to decide the suit as per provisions of Bombay Rent Act. In view of the peculiar facts and circumstances the parties to bear their own costs of this appeal.

8. It is also made clear that in case plaintiff's seeks any amendment having regard to the obsevations made in this judgment, the same be

permitted and Advocate for defendant also be permitted to file additional written statement thereafter.

. Certified copy expedited.

(S.R.SATHE,J.)

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